IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

JUAN RAMON TORRES and)	
EUGENE ROBISON,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	NO. 4:09-cv-2056
)	
SGE ENERGY MANAGEMENT,)	
LTD, et al.)	
)	
Defendants.)	

THE CLEARMAN LAW FIRM'S AND SCOTT CLEARMAN'S REQUEST THAT THE JUDGE RECUSE UNDER 28 U.S.C. § 455

The Clearman Law Firm and Scott Clearman (collectively, "Clearman") request that the Judge recuse under 28 U.S.C. § 455.

- 1. Clearman appealed this Court's Order on the Allocation of Attorneys' Fees and Expenses. The Fifth Circuit reversed and remanded. The court of appeals denied Clearman's request to assign this case to a different judge on remand.
- 2. On February 26, 2020, at the first status conference after remand, the Judge asked whether Clearman wanted him to recuse. Clearman told the Judge that he did. The Judge said that he would recuse himself in response to a motion.
- 3. 28 U.S.C. § 455(a) provides that a judge shall "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The Fifth Circuit has described the standard as "whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality." *United States v. Jordan*, 49 F.3d 152,

155 (5th Cir. 1995). A motion to disqualify brought under 28 U.S.C. § 455 is "committed to the sound discretion of the district judge." *Sensley v. Albritton*, 385 F.3d 591, 598 (5th Cir. 2004), *quoting Chitimacha Tribe v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir. 1982).

- 4. Clearman asks that the Judge recuse under 28 USC § 455. Among other things, Clearman successfully appealed two of the Court's orders, severely criticized the Judge's actions during the second appeal, and tried to have a different judge assigned to the case. The Judge raised the recusal possibility at the initial status conference after remand. There is also a legitimate concern that it would be difficult for any judge to reconsider the allocation of fees properly without being clouded by a prior decision.
- 5. It is within the Judge's discretion to consider and, as appropriate, recuse under 28 U.S.C. § 455.

A proposed form order is attached.

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Respectfully submitted,

WILSONKELLY LLC

/s/ Michael M. Wilson

Michael M. Wilson State Bar No. 21704800

 $Email: \underline{mwilson@wilsonkelly.com}$

3702 Mount Vernon Street Houston, Texas 77006 Tel: 713-590-9730

Fax: 833-743-1339

Attorney for The Clearman Law Firm

and Scott Clearman

CERTIFICATE OF SERVICE

	By my signature below, I certify that on February 27, 2020, the foregoing was forwarded
by	CM/ECF to all counsel of record:

/s/ Michael M. Wilson